

# Study of Fundamental Right of Right to Free and Speedy Trial in India with Special Reference to Judicial Pronouncements

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**Abstract:** *In India, Article 21 of the Constitution governs the right of fair trial and a fair trial implies speedy trial. The Fundamental right to free and speedy trial is a cornerstone of India's legal system, enshrined in the Constitution to safeguard individual's right to justice. No Procedure can be just, fair and reasonable unless the procedure ensures a speedy and fair trial for either finalizing and proving the guilt of the accused person or determining the not guilty and proving his innocence. The Prolonged trial detention of an individual in prison behind bars jeopardizes his personal liberty as such speedy trial is an integral and essential part of the fundamental right of right and personal liberty as This research paper highlights the Constitutional provisions, judicial interpretations, challenges, Landmark Case laws and the potential reforms concerning the aspect of Right to free and speedy trial as an aspect in the Indian Legal framework. Through a multi-dimensional analysis, this paper aims to provide insights into the practical implications and the evolving the landscape of the right to free and speedy trial in India.*

**Keywords:** Criminal, trial, prisoners, unfair detention, fundamental right, Speed trial.

## I. INTRODUCTION

That the right to free and speedy trial is a fundamental aspect of the justice delivery systems worldwide. But in India, due to a lot of burden on the courts of law, this right is not able to guarantee protection of life and personal liberty to all. That the accused persons whether innocent or guilty stays under trial and behind bars till the time the judgement of the Hon'ble court comes, and it takes so much time which results in suffering of both the accused and the complainant. And if the accused is held innocent, then the accused had already been through a pretrial and unfair punishment by staying behind the bars, and if the accused is proved guilty then it results a lot of time to give justice to the victim finally. That the right of free and speedy trial is provided in fundamental rights as well as under the Directive principles of state policy under the Indian Constitution. Hence it is enforceable by law under article 21 of the Constitution as well as it a right provided by state under article 39A of the Indian Constitution. Article 21 of the Indian Constitution forms the bedrock of the right to a free and speedy trial. It mandates that no person shall be deprived of life or personal liberty except according to the procedure established by law. The Supreme court of India has consistently held that the right to a speedy trial is implicit in Article 21, emphasizing the importance of expeditious justice delivery. Over the year the Indian Judiciary has played a pivotal role in interpreting and upholding this right, ensuring its effective implementation in the criminal justice system.

## LEGAL PROVISIONS:

### CONSTITUTIONAL PROVISIONS:

Right to Speedy Trial: Right to Speedy Trail is a concept which deals with disposal of cases as soon as possible so as to make the Judiciary more efficient and trustworthy. The main aim of Right to Speedy trial is to inculcate Justice in the society. It is the human life that necessitates human rights.

Right of Fair Trial: Fair trial is an open trial by an impartial judge in which all parties are treated equally. The right to fair trial is one of the fundamental guarantees of human rights and rule of law, aimed at ensuring administration of justice. Fair trial" includes fair and proper opportunities allowed by law to prove her innocence.

Article 21: According to Article 21 of the Indian Constitution, "No person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court, in 1978, in the *manekagandhi*<sup>1</sup> case held that for the deprivation of life and liberty of a person, two conditions are necessary:

There should be a law, and

The law should be 'reasonable', 'fair' and 'just'.

The procedure prescribed<sup>2</sup> by law for depriving a person of his liberty cannot be "reasonable fair or just" unless that procedure ensures a speedy trial. There are some landmark cases in which Supreme court had held that right to fair and speedy trial is a Fundamental right of a person.

Article 39A: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall in particular provide free legal aid by suitable legislation or schemes or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

CRIMINAL PROCEDURE CODE: The Code of criminal procedure, 1973 also provides various methods and assures a right of speedy and fair trial at investigation stage:

Section 167(2) (a) of Cr.P.C. provides that no magistrate shall authorize the detention of the accused person in custody for total period exceeding:(i) 90 days, where the investigation relates to an offence punishable with death, life imprisonment for life or imprisonment for a term of not less than 10 years;(ii) 60 days, where the investigation relates to any other offence, and on the expiration of such period as case may be the accused shall be released on the bail.

Section 173(1) of Cr.P.C. Provides that every investigation under chapter XII shall be completed without unnecessary delay.

Section 173(1A) of Cr.P.C. Provides that the investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.

Chapter XXI of Cr.P.C. Provides provisions (from section 260 to 265) for summary trial in certain petty offences.

## II. METHODS

This Research paper is based upon the doctrinal method of the research and case study analysis and is prepared by collecting all the important date for the same.

Case Study Analysis: Examined Cases where the Hon'ble Supreme court and various High courts have held that it is necessary that the criminal trial should be proceeded rapidly in India.

Judicial Review: All the landmark judgments in which the Hon'ble Courts have given judicial precedents are scrutinized in this research paper.

## III. DISCUSSION

On the part of the judicial system like pendency of cases, the vacation of court in month of May, judge population ratio, independence of the judiciary.

On the part of the counsel like taking adjournments, lengthy arguments to impress clients, no preparation of the case.

On the part of the accused like absconding, non-cooperative behavior, etc.

The first and the biggest problem is of the delay in disposition of cases. Due to huge pendency, the cases take years for its final disposal, which would normally take few months' times. The arrears cause delay and delay means negating the accessibility of justice in true terms to the common man.

The judge – population ratio – presently taking into consideration the population of the country and pendency of the cases the no. of judges available are very less.

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(Beg, 1978)

The infrastructure of the lower courts is very disappointing. Though, the Supreme Court and High Courts are having good infrastructure but this is not the same position with lower courts. The Courts have no convenient building or physical facilities due to which it takes more time to dispose off a case. Good library, requisite furniture, sufficient staff and reasonable space are the need of the qualitative justice and most of these facilities are not available in lower courts.

Due to the Independence of Judiciary, some Judges think that they are not accountable to any one due to which many a times this factor could drive judges toward comfort, ignorance etc. ultimately results in delay of the case

Provision for adjournment: The main reason for the delay in the cases is the adjournment granted by the court on unreasonable grounds

Vacation of the court: The reason with providing courts with a vacation period also leads to further delay of the cases especially in country such as India where there are tremendous number of pending cases. In most of the countries like U.S. and France there is no such provision

Non availability of accused.

Belated service of summons and warrants on the accused/witnesses

Non production of under trial prisoners in the court.

#### **IV. ANALYSIS OF JUDICIAL PRONOUNCEMENTS**

The Supreme Court in the case of *Rattaram v. State of Madhya Pradesh*<sup>3</sup> observed that the fair trial is the heart of criminal jurisprudence.

A very pertinent observation was made by the constitution Bench of the Supreme Court in *Kartar Singh v. State of Punjab*<sup>4</sup>, which is as under “The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, enquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality can be averted of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the Court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors : (1) length of delay is the justification for the delay, (2) the accused’s assertion of his right to speedy trial and (4) prejudice caused to the accused by such delay. However, the fact of the delay depended on the circumstances of each case because reasons of delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the Court etc.”

A Division Bench of the Calcutta High Court in the case of *Amarendra Nath Dutta v. State of West Bengal*<sup>5</sup> had held ‘Right to speedy trial has not been expressly concerned as a fundamental right in our Constitution. But it has now been settled beyond doubt by a series of decisions of our Apex Court that the same right is fully covered by and comprised in Article 21 of the Constitution guaranteeing non-deprivation of life and liberty save according to procedure established by law It is not the number of years that matters, what really matters is the principle and rationale behind the delay. No prosecution should be allowed to drag on for years to the prejudice of the accused unless the prosecuting agency satisfies the Court that there were compelling reasons for such delay which could be helped.’

In a Full Bench decision of the Patna High Court in *Madheshwardhari Singh v. State of Bihar*<sup>6</sup> it was held that in all criminal prosecutions the right to a speedy trial is now an inalienable fundamental right of the citizen under Article 21 of the Constitution, that right to speedy public trial is available. all criminal prosecutions irrespective of the nature of the offence involved.

<sup>3</sup>(Misra, 2012)

<sup>4</sup>(Sahai, 1994)

(Bhattacharya, 2023)

<sup>6</sup>(Sanshwalia, 1986)

In *Abdul Rahman Autulay v. R.S. Nayak*<sup>7</sup> the Constitution Bench of the Apex Court dealt with this aspect of the matter and laid down certain guidelines. The relevant passage in the judgment are as follows: “Another question seriously canvassed before us related to the consequence flowing from an infringement of right to speedy trial. Counsel for accused argued on the basis of the observations in Sheela Barse’s case and Strunk’s case,<sup>3</sup> that the only consequence is quashing of charges and/ or conviction, as the case may be. Normally, it may be so. But we do not think that is the only order open to court. In a given case the facts including the nature of offence may be such that quashing of charges may not be in the interest of justice. After all, every offence- more so economic offences, those relating to public officials and food adulteration- is an offence against society. It is really the society- the State- that prosecutes the offender. In view of the above discussions, the following propositions meant to serve as guidelines.

These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution Creates a right in the accused to be tried speedily. Right In speedy trial is the right of the accused. The fact that a speedy trial also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21, encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are: (a) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or long incarceration prior to his Conviction. (b) the worry, anxiety, expense and disturbance to his vocation and place, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and (c) undue delay may well result in impairment of the accused of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.”

Speedy Trial as a Fundamental Right in India In *Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*<sup>8</sup>, speedy trial was accepted as a fundamental right and in this case Justice P.N. Bhagwati (for himself and on behalf of Justice Koshal) observed that: We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in *Maneka Gandhi v. Union of India*<sup>6</sup> We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just'. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair or just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The Apex Court, in this case, held that the “right to a speedy trial” is a fundamental right implicit in the right of life and personal liberty provided under Article 21 of the Indian Constitution.

In *Sheela Barse v. Union of India*<sup>9</sup>, the Apex Court held that if an accused is not tried speedily and his case remains pending before the Magistrate or the Sessions Court for an unreasonable length of time, it is clear that his fundamental Right to Speedy Trial would be violated unless, of course, the trial is held up on account of some interim order passed by a superior court or the accused is responsible for the delay in the trial of the case. The consequence of violation of

<sup>7</sup>(Reddy, 1991)<sup>1</sup>

<sup>8</sup>(Bhagwati, Indiankanoon, 1979)

<sup>9</sup>(Bhagwati, indiankanoon, 1986)

the fundamental Right to Speedy Trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right.

Mercy Petitions for death row convicts and Right to Speedy Trial It has recognized principle that speedy trial is an essential ingredient for protecting liberty. But the issue is whether liberty of a person, who received punishment of death sentence from Apex Court, should be protected? Before going into this question, it is important to consider that whether he/she has liberty or not? It can be answered that liberty of such person is curtailed by a procedure established by law which was reasonable, fair and just. Such person got the sentence by reasonable, fair and just procedure and another issue are that whether such sentence should be executed in reasonable, fair and just manner or not. Whether Right to Speedy Trial has relevance in deciding mercy petitions and if yes, then what should be remedy in case violation of Right to speedy trial took place. The Apex Court described these aspects in different cases in different manner. In T.V. Vaitheeswaran v. State of Tamil Nadu<sup>20</sup>, appellant was sentenced to death but punishment was not executed for eight years and appellant was in solitary confinement in all this period. The main issue before the Apex Court was whether delay in execution of death sentence mitigates punishment. Article 21 provides right to life and liberty and this right only curtailed by just fair and reasonable procedure established by law and it also include Right to Speedy Trial. It was accepted by the court that prolonged detention to await execution of death sentence is unfair, unjust and unreasonable procedure to deprive a person from his right to life and liberty. Court held that delay of two years or more in execution of death sentence liable to quashing of death sentence and in this case death sentence was substituted by life imprisonment

#### **V. FINDING OR RESULT**

Addressing the Challenges surrounding the right to a free and speedy trial necessitates comprehensive reforms and proactive initiatives. Efforts such as the introduction of alternative dispute resolution mechanisms, judicial reforms to enhance efficiency, modernization of court infrastructure, and capacity building initiatives for legal professionals are imperative to expedite the trial process and reduce delays. The right to a speedy trial is a fundamental right inherent under Article 21 of the constitution which provides for the right to life and personal liberties. Our Constitution provides that whenever there is a violation of fundamental rights, a person can move to the Supreme Court under Article 32 and to the High Court under Article 226 of the Constitution.

The Major Findings for the failure in speedy and fair trial and reasons for the delay in the processes of the criminal courts are written as hereinunder:

Effective management of the courts: Time scheduling should be done so that there is effective management of time leading to effective management of judicial system.

Steps for Judges should be provided with proper training and vocations on a regular basis to improvise there drafting, hearing and writing skills along with the skill of taking correct and fast judgment.

Cases must be assigned according to specialized area of judges.

Cases must be assigned according to specialized area of judges. This means that a Judge who has a good experience/knowledge of Criminal law should try criminal cases, a Judge who has deep knowledge of Labor law should try Labor law cases. So is the case with other cases

Arbitration should be done wherever possible and in particular small and petty cases arbitration should be made compulsory. It will save precious time the courts

The procedure of Adjournalment should be modified in a way so as it is reduced to a limit and fine should be imposed on the person who files application for an adjournment on flimsy grounds.

Technological Courts and Speedy Justice: The technological development made by the human being in the field of science can be highly useful in realization of this objective. In last two decades, Information technology has brought many beneficial changes into our lives. And this tool of information technology can be equally useful in imparting justice.

Nyaya Panchayats should be authorized to dispose of small and petty cases. However, LokAdalat's were established for the speedy disposal of cases at lower level.

Legal Safeguards and Challenges: Various Legal Safeguards are provided under the Constitution of India for speeding up the criminal trial by Indian Judiciary and to prevent the delay and prolonging the criminal cases in India. The

Challenges remains before the Hon'ble courts and police machinery to implement these legal provisions in a way which will result in the speeding up of the trials.

Recommendations: Based on the above-mentioned findings, the reforms to solve this problem would be more and more courts in India, and making fast track courts for heinous offences, and to improvise the administrative part of the Judiciary.

## VI. CONCLUSION

Right to speedy trial flowing from Article 21 encompasses all stages, namely the state of investigation inquiry, trial, appeal, revision and re-trial. It is true that every person accused of an offence is entitled to the fundamental right enshrined in Article 21 of the Constitution and the right to speedy justice may be read as part and parcel of that fundamental right. At the same time, it is also true that penal laws not only prescribe punishment for acts charged as offences, tile penal laws create tile offences and by implication pose legal duties to be performed by the citizens. Penal laws, therefore, by creating legal duties create corresponding rights in favor of the citizens and the only manner in which those rights can be enforced is by prosecuting and punishing the offenders. The rights created by the penal laws, by implication, cannot be enforced in any other manner than by prosecution of the offender. The courts have explained the enforcement of penal provisions. In view of this, balance has to be stuck between the fundamental rights of the accused persons and the right of those who are victims of offences. Justice has to be conceptualized as a balance between the rival interests. Justice can never be one sided. In order that a certain act may be just, it should be just not only for the accused, it should also be just for the prosecution.

So finally, it can be said that the right to a free and speedy trial is an indispensable right for upholding the constitutional principles of justice, equity and good conscience in India. While the Constitutional safeguards and judicial interventions provide a framework for its protection, persistent challenges underscore the need for sustained reforms and collaborative efforts by all. By prioritizing the expeditious resolution of cases and ensuring equitable access to justice. Indian strengthen its legal right by fastening the speedy and fair trail system in India.

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